DOCKET FILE COPY ORIGINAL

e.spire™

January 18, 2001

**Via Hand Delivery and Regular Mail**

RECEIVED

JAN 23 2001

FCC MAIL ROOM

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th St. SW
Washington DC 20554

**Re: CC Docket No. 00-217**

**Impact of Proposed Transitional Phase-Out of Reciprocal Compensation on e.spire Communications, Inc.**

Dear Ms. Salas:

The following is an update on recent developments between e.spire Communications, Inc. (e.spire) and Southwestern Bell Telephone Company (SWBT) concerning issues raised by e.spire in this docket. While some progress has been made since e.spire filed its comments in this docket, SWBT still has not met Checklist Points 13 (reciprocal compensation) and 2 (access to unbundled network elements).

## I. Reciprocal Compensation (Checklist Point 13)

Checklist Point 13 requires that reciprocal compensation be paid for all local traffic sent by SWBT to e.spire. e.spire and SWBT have reached a settlement of their reciprocal compensation complaint in Oklahoma, and e.spire therefore has no further issue at this time with respect to reciprocal compensation in Oklahoma.[1] e.spire and SWBT are currently in the midst of negotiations concerning the Kansas complaint but, to date, the Kansas complaint remains pending. Accordingly, e.spire will focus on the Kansas complaint.

On December 18, the Kansas Corporation Commission issued an order finding that ISP-bound traffic is local traffic in its generic docket addressing the issue. Docket No. 01-SWBT.109.COM. The KCC further found that interconnection agreements requiring payment of reciprocal compensation on local traffic are to be interpreted to require payment for all ISP-bound traffic at the rate contractually specified for reciprocal compensation.

Two days later, on December 20, 2000, e.spire's complaint seeking reciprocal compensation for ISP-bound traffic came up for hearing before the KCC. At that hearing, the Commission questioned the need for additional evidence on the ISP issue in

[1]The parties have not yet signed the settlement but have reached an agreement in principle.

No. of Copies rec'd 0
List A B C D E

REGULATORY DEPARTMENT
espire Communications, Inc.
131 National Business Pkwy, Suite 100
Annapolis Junction, MD 20701
phone 301.361.4200
fax 301.361.4277
www.espire.net

the e.spire complaint docket. The KCC expressed its perspective that there is no longer a dispute that payments are due for ISP-bound traffic terminated by e.spire and its sense that at least that portion of the payments should no longer be in dispute and should be transferred to e.spire.

However, SWBT continues to withhold payment of reciprocal compensation for local traffic to e.spire in Kansas. SWBT's nonpayment now appears to be based upon its claim that virtually all Kansas City traffic is jurisdictional to Missouri, despite the fact that the Kansas City market straddles the border and, as discussed below, over 40% of the local traffic in question originates in Kansas.

Based upon SWBT's own usage measurements,[2] SWBT owes e.spire over $7.5M for the combined Missouri and Kansas local traffic handled by e.spire's Kansas City switch. According to SWBT, only about $103,581.24 – or less than 2% -- of that amount is jurisdictional to Kansas, and SWBT recently paid this amount to e.spire. However, e.spire's studies indicate that, by contrast, and consistent with the realities of the Kansas City market, 41% of the traffic in question originates in Kansas. While the basis for SWBT's 2% figure is unclear, e.spire's 41% figure derives from the simple fact that 41% of the minutes come to e.spire's switch over trunk groups that originate in Kansas.

SWBT has been instructed by the Kansas Commission to pay e.spire for all ISP-bound traffic. Based upon e.spire's percentage, SWBT has been instructed to pay e.spire, at a minimum, $3,090,617.20 for reciprocal compensation for local traffic; as noted, SWBT has paid only $103,581.24. Applying this Commission's policy of requiring payment as ordered by the states in order to meet the Checklist, SWBT is in derogation of KCC orders, and simply does not meet Checklist Point 13 at this time. Notably, e.spire is continuing to engage in negotiations with SWBT concerning the Kansas traffic in question, and would naturally prefer to settle these issues, rather than continue with its Kansas complaint.

## II. Special Access to Loop/Transport (EEL) Conversions (Checklist Point 2)

e.spire also submits that SWBT does not meet Checklist Point 2 given that it has failed to establish a Commission-compliant procedure to convert special access circuits to loop/transport combinations (EELs). e.spire has yet to convert a single T-1 special access circuit to an EEL due to SWBT's failure to adopt Commission-compliant procedures to do so. As of March 24, 2000, e.spire had identified 142 such circuits eligible for conversion, and a larger volume of circuits would be eligible today. SWBT has still failed to adopt a Commission-compliant ordering procedure for EEL conversions.

[2]By e.spire's usage measurements, the total amount due is over $11M.

In addition, despite the Commission's clear directive that "the process by which special access circuits are converted . . . should be simple and accomplished without delay" (*Supplemental Order Clarification*, June 2, 2000, para. 30), SWBT still refuses to compensate e.spire for the substantial savings that would have accrued to e.spire in FY2000 had SWBT complied with the Commission's orders when those orders became effective last year. By contrast, BellSouth has applied a substantial credit to e.spire's account in December 2000, and Qwest has firmly committed to giving e.spire a retroactive true-up.

Although SWBT revised its ordering procedures on December 27, 2000, the revised process is still flatly inconsistent with the Commission's requirements. In short, SWBT is attempting to unilaterally expurgate those portions of the Commission's orders that it does not like. For example, SWBT's initial process required both an ASR and an LSR, rather than just an ASR, as repeatedly required by the Commission[3]. After its December 27 revision, SWBT still does not comply with the ASR-only requirement. SWBT in fact would still make CLECs pay for both an ASR and an LSR, and has now added an additional $14 surcharge to its ordering process.[4]

SWBT (like Qwest) is also taking the position that it can audit e.spire's orders for compliance with the Commission's "significantly local" test prior to converting circuits. Again, this is inconsistent with the Commission's explicit requirements: "upon receiving a conversion request that indicates that the circuits involved meet one of the three thresholds for significant local usage . . . the incumbent LEC should immediately process the conversion. We emphasize that incumbent LECs may not require a requesting carrier to submit to an audit prior to provisioning combinations . . . ." *Supplemental Order*, para. 31. SWBT has also frustrated the Commission's desire to see prompt conversions by insisting upon "negotiated" rather than firm conversion intervals, again, in contrast to BellSouth and Qwest which have readily recognized the need for retroactive payments due to ILEC-initiated delays.

Accordingly, SWBT continues to fail to meet the Commission's explicit requirements, both with respect to reciprocal compensation (Checklist Point 13) and access to EEL combinations (Checklist Point 2). Both of these issues are critical cost-recovery issues for e.spire. If the Commission hopes to improve the current status of local competition and remove existing barriers to entry, e.spire submits that these types of critical cost-recovery issues must be at the center of the Commission's Section 271 consideration. Absent improved compliance on these points, SWBT's pending application for Kansas and Oklahoma should be denied.



[3] The ASR process, as the more mature, older process designed for competitive access services, is preferable from a CLEC perspective to the newer, less efficient LSR process.
[4] It is unclear whether the $14 surcharge applies on a DS-0 or DS-1 basis. If it applies on a DS-0 basis, the surcharge for a T-1 could be as high as $336.

e.spire will continue to keep the Commission apprised of ongoing developments concerning both of these matters. Thank you for your timely attention to these matters.

Sincerely,

James C. Falvey

James C. Falvey
Senior Vice President
Regulatory Affairs

cc: Frank Lamancusa
Gary Phillips
Steven Augustino
Ross Buntrock
Marc Elkins

RECEIVED

JAN 23 2001

FCC MAIL ROOM